



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Fauquier County Public Schools  
FOR  
H.M. Pearson Elementary School  
Sewage Treatment Plant  
VPDES Permit No. VA0027278**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Fauquier County Public Schools, regarding the H.M. Pearson Elementary School Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "County" refers to the "Fauquier County," as defined below.
3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility" or "Plant" means the onsite sewage treatment plant for the H.M. Pearson Elementary School, located at 9347 Bastable Mill Road, Fauquier County, Virginia, from which discharges of treated sewage occur.
11. "Fauquier County" means Fauquier County Public Schools, a political subdivision of the Commonwealth of Virginia. Fauquier County Public Schools is a "person" within the meaning of Va. Code § 62.1-44.3.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
15. "Permit" means VPDES Individual Permit No. VA0027278, which was issued under the State Water Control Law and the Regulation to "Fauquier County" on July 3, 2014, and expires on July 2, 2019.
16. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.

17. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "STP" means the sewage treatment plant, and refers to the "Facility" as defined above.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.
25. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Fauquier County Public Schools owns the Facility. The Permit allows Fauquier County to discharge treated sewage from the Facility, to the Cedar Run, in strict compliance with the terms and conditions of the Permit.
2. The Cedar Run is located in the Potomac River Basin. The Cedar Run is listed in DEQ's 305(b) report as impaired for the recreation use (*E. coli* bacteria). There is a bacteria Total Maximum Daily Load (TMDL) in place for the Cedar Run and the Licking Run, and the Facility received a waste load allocation (WLA) of 1.38E+10 colony forming

units per year (cfu/year) *E. coli*. The aquatic life use is considered fully supporting, the wildlife use is assessed as fully supporting, and the fish consumption use is not assessed.

3. Environmental Systems Service, Ltd. (ESS) operates the STP on behalf of Fauquier County Public Schools. Prior to November 14, 2016 the STP was managed by the Fauquier County Water and Sanitation Authority (WSA).
4. Parts I.A.1 and II.B.1 of the Permit require Fauquier County to monitor and limit certain effluent characteristics in discharges to freshwater receiving waterbodies.
5. In submitting its DMRs, as required by the Permit, Fauquier County has reported that it exceeded discharge limitations contained in Parts I.A.1 and II.B.1 of the Permit as follows:
  - a. total residual chlorine (TRC) for November 2016, December 2016, January 2017, and May 2017;
  - b. pH for January 2017; and
  - c. dissolved oxygen for January 2017 and May 2017.
6. The DMR submitted for July 2018 did not report flow or any of the required parameters, indicating no effluent discharge from the STP occurred during that month. However, it was reported to DEQ, and later confirmed via correspondence with Fauquier County and ESS, that flow from unidentified sources inadvertently passed through the STP system in July 2018 when the STP was not operating. As a result, an unknown quantity of untreated flow was discharged into Cedar Run until normal STP system operation was resumed on August 1, 2018.
7. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
8. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
9. The August 2016 DMR was due by September 10, 2016, and the October 2016 DMR was due by November 10, 2016; DEQ received these report submissions on September 26, 2016, and December 15, 2016, respectively.
10. Part II.C.1 of the Permit requires monitoring results to be submitted to DEQ by the 10<sup>th</sup> day of the month following the end of the monitoring period.
11. NRO issued Warning Letters and a Notice of Violation for the violations described above in paragraphs C(1) through C(10) as follows:
  - a. WL No. W2016-12-N-1003, issued December 15, 2016;
  - b. WL No. W2017-01-N-1002, issued January 5, 2017;
  - c. WL No. W2017-02-N-1012, issued February 17, 2017;

- d. Referral NOV No. W2017-03-N-0011, issued March 15, 2017;
  - e. NOV No. W2017-07-N-0002, issued July 13, 2017; and
  - f. NOV No. W2018-09-N-0008, issued September 25, 2018.
12. Written responses to the WLs and NOVs were submitted to DEQ on December 15, 2016, January 16, 2017, January 23, 2017, March 17, 2017, and October 25, 2018. DEQ also regularly corresponded with representatives of Fauquier County and ESS via phone and email throughout the period of noncompliance.

Fauquier County stated that oversight during the 2016 operator transition led to the late submittal of the August 2016 and October 2016 DMRs. Consistent on-time submission of DMRs since November 2016 have adequately resolved these reporting deficiencies described above in paragraphs C(9) and C(10).

Fauquier County and ESS attributed the effluent limit exceedance issues to frequent starting and stopping of treatment system operations due to the lack of flow equalization at the STP, which created a challenging environment to consistently control chlorine residuals. In March of 2017 Fauquier County notified DEQ that a small weir plate was installed in each tablet chlorine and dechlor box in order to raise water levels and increase contact time. Additionally, in February 2017, the method and timing of sample collection after periods of system non-operation were modified, which resulted in the collection of a more representative sample. Since the implementation of these corrective actions in 2017, no further effluent limit noncompliance has been reported on DMR submissions to date, confirming adequate resolution of the violations described above in paragraphs C(4) and C(5).

In response to the September 2018 NOV, Fauquier County and ESS have explained that they do not believe inflow and infiltration (I&I) is an issue, and that the July 2018 STP discharge likely came from the school's onsite septic tanks. Per discussion with Fauquier County, the onsite septic tanks are typically emptied around the end of each school year in May, and the empty septic tanks are supposed to provide enough storage capacity for the minor flows that occur during the summer; such that the septic tanks should not discharge to the STP. However, as described above in paragraphs C(6) through C(8), the volume of 2018 summer flows resulted in untreated discharges from the STP throughout July 2018. In attempt to remedy the issue, Fauquier County has expressed the intent to install a septic tank high-level alarm system. The alarm system would be used as notification to implement offsite pump and haul of the septic tanks when needed during summer seasonal school closures to prevent septic tank flow from entering the STP when the STP is not operating.

13. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
14. The Department has issued no permits or certificates to Fauquier County Public Schools for the Facility other than VPDES Individual Permit No. VA0027278.

15. The Cedar Run is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
16. Based on the results of the file review and correspondence between DEQ, Fauquier County Public Schools, and ESS, the Board concludes that Fauquier County has violated condition Parts I.A.1, I.B.1, and II.C.1 of the Permit, by discharging from the Facility while concurrently failing to comply with the conditions of the Permit, and for late and/or incomplete document submissions; as described above in paragraphs C(1) through C(15).
17. In order for Fauquier County to return the Facility to a state of compliance, DEQ staff and representatives of Fauquier County have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders Fauquier County, and Fauquier County agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$4,077** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Fauquier County Public Schools shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Fauquier County shall be liable for attorneys’ fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Fauquier County Public Schools for good cause shown by Fauquier County, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2018-09-N-0008 dated September 18, 2018, NOV No. W2017-07-N-0002 dated July 13, 2017, NOV No. W2017-03-N-0011 dated March 15, 2017, WL No. 2017-02-N-1012 dated February 17, 2017, WL No. W2017-01-N-1002 dated January 5, 2017, and WL No. 2016-12-N-1003 dated December 15, 2016. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Fauquier County Public Schools admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Fauquier County Public Schools consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Fauquier County Public Schools declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Fauquier County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Fauquier County Public Schools shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Fauquier County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Fauquier County shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Fauquier County Public Schools. Nevertheless, Fauquier County agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Fauquier County has completed all of the requirements of the Order;
  - b. Fauquier County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Fauquier County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Fauquier County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Fauquier County and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Fauquier County certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Fauquier County to this document. Any



documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Fauquier County.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Fauquier County Public Schools voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28<sup>th</sup> day of June, 2019.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

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Fauquier County Public Schools voluntarily agrees to the issuance of this Order.

Date: 4/29/19 By: David Jeck, Superintendent  
(Person) (Title)  
Fauquier County Public Schools

Commonwealth of Virginia  
City/County of Fauquier

The foregoing document was signed and acknowledged before me this 29 day of April, 2019, by David Jeck who is Superintendent of Fauquier County Public Schools, on behalf of Fauquier County Public Schools.

Victoria Grindt  
Notary Public

241527  
Registration No.

My commission expires: 1/31/2020

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

Fauquier County Public Schools shall:

1. Within 60 days of the effective date of this Order, provide documentation to DEQ of the completion of the installation of a septic tank alarm system at H.M Pearson Elementary School in accordance with the corrective actions proposed via email correspondence dated November 6, 2018. The documentation submitted to DEQ should include any startup and initial operation/testing information to show that the alarm system will be fully functional for the upcoming planned 2019-summer seasonal school closure.
2. Within 75 days of the effective date of this Order, provide DEQ with a copy of the standard operating procedure (SOP), or similar document, that will be used and implemented by Fauquier County staff for the proper operation of the septic tank alarm system.
3. Unless otherwise specified in this Order, Fauquier County shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality  
Northern Regional Office  
Attention: Enforcement  
13901 Crown Court  
Woodbridge, VA 22193